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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~5700~~ 70-5014

PETER STANLEY, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 45 Ill. 2d 132, 256 N.E. 2d 814 (1970).

JURISDICTIONAL STATEMENT

The jurisdiction of this Court to review the judgment of the Supreme Court of Illinois is denied.

The appointment of a guardian by the Circuit Court of Cook County, Illinois, Juvenile Division, is not a final order,[1] did not affect a change in the custody of the children here involved,[2] and was but the commencement of proceedings by which the legal and custodial rights to the children were to be determined.

In the trial court, the sole issue was whether the petitioner was a parent as defined by state statute. Petitioner never asserted however, that such a definition was constitutionally infirm under the equal protection clause. The trial judge held that Stanley is not a legally responsible parent entitled to the custody and control of the children under Illinois law.[3] Petitioner has consistently refused to accept the responsibilities of parenthood by his failure either to legitimate the children while their mother was alive or to adopt them. Therefore, he has no custodial rights.

The Supreme Court upheld this decision and properly refused to consider petitioner's untimely constitutional argument.[4] The order entered by the trial court appoint-

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1. Ill. Rev. Stat., 1969, Ch. 37, § 705-8.

2. The children were placed by petitioner with the persons the court appointed as guardians.

3. Ill. Rev. Stat., 1969, Ch. 37, § 701-14.

4. The Supreme Court of Illinois, in its opinion in this case stated that Stanley had no standing to raise the equal protection issue since he had not been precluded from obtaining custody of the children. Should he choose to follow the proper procedure as provided by statute (Ill. Rev. Stat. 1969, Ch. 4), he might obtain custody. Of course, this result cannot be assumed on the record here since there has been no inquiry into Stanley's fitness and ability to act as a parent. This determi-

ing a guardian is subject to modification at any time. The petitioner has not been precluded from obtaining the custody of these children. However, this decision as to custody quite properly has been postponed until the petitioner is willing to accept legal responsibility for the children as well.[5]

This Court is without jurisdiction to review a non-final state court order upon federal constitutional grounds which were improperly raised and left undecided by the state court below.

CONSTITUTIONAL PROVISION

Section one of the fourteenth amendment to the Constitution of the United States:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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nation is only possible after a hearing in which testimony is heard and evidence taken, and in which the primary focus is the ultimate welfare of the children, not of petitioner Stanley.

5. A. 29, 30.

STATUTORY PROVISIONS*

Illinois Revised Statutes, 1969, Chapter 3 (Administration of Estates

Section 12-8 (2nd paragraph) (illegitimates)
1969 State Bar Association Edition, Vol. 1, 37.

Illinois Revised Statutes, 1969, Chapter 4 (Adoption)

Section 9:1-1 (definitions)
1969 State Bar Association Edition, Vol. 1, 86-7.

Illinois Revised Statutes, 1969, Chapter 37, (Juvenile Court Act)

Section 701-11 (guardianship)
1969 State Bar Association Edition, Vol. 1, 1562.

Section 701-12 (legal custody)
1969 State Bar Association Edition, Vol. 1, 1562.

Section 701-14 (parents)
1969 State Bar Association Edition, Vol. 1, 1562.

Section 702-4(1) (neglected minor)
1969 State Bar Association Edition, Vol. 1, 1563.

Section 702-5(1) (dependent minor)
1969 State Bar Association Edition, Vol. 1, 1563-4.

Section 705-2 (dispositional orders)
1969 State Bar Association Edition, Vol. 1, 1563.

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*The statutes are set forth verbatim in **Appendix A**, infra, p. 35.

Section 705-7 (placement, legal custody, or guardianship)
1969 State Bar Association Edition, Vol. 1, 1569.

Section 705-8 (change of custody)
1969 State Bar Association Edition, Vol. 1, 1570.

Section 705-9 (power of guardian to consent to adoption)
1969 State Bar Association Edition, Vol. 1, 1570.

Illinois Revised Statutes, 1969, Chapter 89, (Marriage)
Section 4 (effect of marriage)
1969 State Bar Association Edition, Vol. 2, 573

Illinois Revised Statutes, 1969, Chapter 106¾ (Paternity)
Section 51 (definitions)
1969 State Bar Association Edition, Vol. 2, 1291.

Section 52 (liability of father and mother to child)
1969 State Bar Association Edition, Vol. 2, 1292.

Section 59 (judgment-retention of jurisdiction)
1969 State Bar Association Edition, Vol. 2, 1293.

Section 62 (custody of child)
1969 State Bar Association Edition, Vol. 2, 1294.

Illinois Revised Statutes, 1969, Chapter 111½, (Public Health)
Section 73-17 (new certificate of birth)
1969 State Bar Association Edition, Vol. 2, 1759-60.

QUESTION PRESENTED

Whether the legislative scheme adopted by Illinois to ensure the welfare and protection of children born out of wedlock violates the constitutional equal protection guarantee?

STATEMENT OF THE CASE

Petitioner Peter Stanley placed Peter Stanley, Jr., two and one-half years old and Kimberly Stanley, one and one-half years old in the home of Mr. and Mrs. Richard Ness. (A. 18, 22). The children were living with the Nesses on April 1, 1969, when a neglect petition was filed with the Circuit Court of Cook County, Juvenile Division. The petition alleged Peter Stanley to be the father of the children. (A. 2). Lucille Glenn, a probation officer, was unable to determine the whereabouts of Peter Stanley, Sr. and Mr. and Mrs. Ness were appointed temporary guardians of the children (A. 10). On April 15, 1969, Peter Stanley appeared with counsel. After a conference with Peter Stanley's attorney (A. 11), the State moved for leave to amend the Neglect Petition to a Dependency Petition because Peter and Joan Stanley (the children's mother) never married (A. 14). Without objection, leave was granted although the petition was never formally amended on its face. On May 6, 1969, the parties again appeared in the Juvenile Court. Peter Stanley, by his counsel, expressed his interest in continuing to receive the Social Security benefits due Peter Jr. and Kimberly Stanley. No question of custody was raised (A. 14).

On May 6, 1969 an order of dependency was entered. Mr. and Mrs. Ness accepted appointment as guardians (A. 23) and the Nesses were given leave to receive and disburse social security funds on behalf of the children (A. 23-24).[6]

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6. Subsequent to the application by petitioner for a writ of certiorari, conflict between the Ness family and petitioner resulted in a transfer of the children to another home. The motion of the State of Illinois for appointment of a guardian with power to consent to an adoption has been held in abeyance by the Juvenile Court pending the outcome of this case.

On May 16, 1969, petitioner's counsel, who previously had represented Karen Stanley, an older daughter, in a dispute between her and Peter Stanley (A. 11, 28), entered the case on behalf of Peter Stanley (A. 26), and filed a motion to vacate the order of May 6, 1969 (A. 30). The motion was continued to May 19, 1969, and denied that date. Whereupon, Peter Stanley appealed (A. 8) to the Supreme Court of Illinois. On March 24, 1970, the Supreme Court of Illinois affirmed the judgment of the trial court (A. 33). This Court granted the writ of certiorari herein on January 25, 1971 (A. 35).[7]

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7. Throughout his brief, petitioner suggests his prior care, alleged paternity, interest and family continuity of eighteen years in support of his petition. These matters were not relevant to the inquiry under a Dependency Petition. The sole factual question in the trial court was whether Peter Stanley was the legal father of the children as defined by statute. The State had no need then, nor does it now, to rebut petitioner's factual claims, some of which are unsubstantiated by the record.

SUMMARY OF ARGUMENT

Every society strives to guard its children from abuse and neglect, for it is only through them that a state or nation can perpetuate itself. Their welfare is the most compelling interest a government may have.

To meet this compelling challenge, Illinois has promulgated a comprehensive legislative plan which affects all children in need of protection from abuse, neglect or abandonment. This plan reaches children whose parents are married to each other as well as those who are legally defined as illegitimate. The sole factor which determines whether the State shall intervene in the upbringing of a child under this statutory scheme is whether the welfare of a child requires some action by the State.

Under this statutory pattern, a "parent" is defined as the mother or father of a legitimate child and the mother of an illegitimate child. The facts of this case present the issue of whether the natural father should have an automatic right to the legal control of an illegitimate child upon the mother's death. The absence of any legal responsibility for the child and the general disinterest of putative fathers in their illegitimate children makes apparent the futility of giving these fathers an automatic right to custody or legal control. Such a procedure conferring custody or control without legal or moral responsibility would be in derogation of the welfare of children.

Petitioner was not deprived of the custody of his natural children by this statutory plan. Petitioner could have legitimated the children by marriage, he still may by adoption. Through either procedure, a putative father may secure the rights of a parent. The State only re-

quires that he assume legal responsibility for the children as well. This requirement, imposed upon all mothers and upon married fathers is reasonable and in the best interests of innocent children, born in or out of wedlock. By considering only the best interests of the objective of the classification—children—the statutory scheme here questioned necessarily protects the interests of natural parents insofar as those interests do not conflict with the welfare of children.

ARGUMENT

THE ILLINOIS STATUTORY SCHEME ESTABLISHING PARENTAL RIGHTS AND RESPONSIBILITIES WHICH DEFINES THE TERM "PARENT" TO EXCLUDE THE PUTATIVE FATHER OF AN ILLEGITIMATE CHILD IS A REASONABLE MEANS OF PROTECTING THE WELFARE OF CHILDREN SUBJECT TO ITS PROVISIONS AND IS NOT VIOLATIVE OF THE EQUAL PROTECTION GUARANTEE.

This case assumes that petitioner Peter Stanley is the natural father of Kimberly and Peter Stanley, Jr., two minor children whose natural mother is deceased. As the natural father, the petitioner claims that he is entitled as a matter of right to the automatic custody and control of these children upon their mother's death. He argues that the Illinois statutory scheme which imposes both rights and responsibilities upon parents of children violates the equal protection guarantee of the fourteenth amendment by defining the term "parent" as the father or mother of a legitimate child or the mother of an illegitimate child. This definition excludes him from the automatic assumption of parental rights (custody) as well as parental responsibilities. It requires that he subject himself to the scrutiny of a court in a proceeding focusing upon the issue of the welfare of the children in question before a factual determination may be made compelling the legal determination of certain parental rights i.e. custody. Since fathers of legitimate children and mothers of children born out of wedlock are not required to subject themselves to this factual determination of fitness before they are entitled to parental rights, petitioner Stan-

ley asserts that the Illinois definition of parent unreasonably discriminates against fathers of illegitimate children.

Respondent will show that the comprehensive plan established by the Illinois legislature to protect all children during their formative years from neglect and abuse is a reasonable means of fulfilling a legitimate and necessary governmental objective. This plan, which does exclude illegitimate fathers from the definition of "parent," suffers from no constitutional infirmity. We will focus in particular upon the statutory scheme as it affects illegitimate children.

At common law the child born out of wedlock was nullius filius, the son of no one. *Brewer* v. *Blougher*, 14 Pet. 178, 198 (1840). Neither his mother nor his father had a right to custody. The custody of the child born out of wedlock was in the parish where he was born. 1 Blackstone's Commentaries 459 (Jones ed. 1915); *Horner* v. *Horner*, 161 Eng. Rep. 573, 578 (Ch. 1799). No person had an obligation to support the illegitimate until 1575 when both parents were made criminally accountable for making the child a public charge. 18 Elizabeth c. 3.[8] This was the law in the Northwest Territories prior to the formation of Illinois as a State. *McCool* v. *Smith*, 66 U.S. 459 (1861); Dominik Lasok, "Virginia Bastardy

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8. Petitioner's statement (Pet. Br. 74) that under this statute a decision as to custody was left to the discretion of the parish judges is not supported by a reading of that statute. Petitioner is perhaps confused by Section 7 of the Poor Law Amendment Act of 1844 which provided that on the death of the mother, custody was to be determined by the local judges. 2 Hallisbury's Statutes (2nd) 471-2; 7 & 8 Vic. c. 101, § 7.

Laws; A Burdensome Heritage," 9 *Wm. & Mary L. Rev.* 402, 407 (1967). Except as modified by statute, the common law of England through March 23, 1607, is the law of Illinois. Ill. Rev. Stat., 1969, Ch. 28, § 1; *Cope* v. *Cope,* 137 U.S. 682 (1891).[9]

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9. In a totally spurious analysis of the English precedents, based in part on out-of-context quotations, petitioner has attempted to suggest that at common law a putative father had custodial rights in his child. He had none, not even upon the death of the child's mother. Horner v. Horner, 161 Eng. Rep. 573, 579 (Ch., 1799).

Rex v. Mosley, 5 East 224 (1804) cited by petitioner for the proposition that "where the father had custody of a bastard child fairly, the courts would *not* remove it on the grounds that he had no parental rights (Pet's. Br. 61), reads:

> "Lord Kenyon C.J. Take a rule. Where the father has the custody of the child fairly, I do not know that this Court would take it away from him; though I do not mean to impeach the propriety of the case cited. But where he has got possession of the child by force or fraud, as is here suggested, we will interfere to put matters in the same situation as before. Rule granted."

This dicta of Lord Kenyon does not aid petitioner's assertion, as the case Lord Kenyon was referring to was that of Rex v. Soper, 101 Eng. Rep. 156 (K.B. 1793) holding that the illegitimate father had no right of custody even after an order of filiation had been entered against him under the Poor Law Acts.

Petitioner relies on Kent's statement that "the rule that a bastard is nullius filius, applies only to the case of inheritance." (Pet's. Br. 62). This reference was not an admission of any rights in the putative father but only a reference to the fact that in England a bastard child was not, by reason of his birth, under the severe disabilities that were placed against him on the continent. 2 Pol-

Neither the mother nor the father had custody of the child born out of wedlock under the common law at the time it was adopted by Illinois. However, the Illinois legislature presumed custody of the child to be in the mother. While no express statutory reference to custody absent a paternity proceeding appears under early Illinois law, the mother of a child born out of wedlock was given the power to bind a child as an apprentice, while in the case of a married couple, the father was given that power. Revised Laws of Illinois, 1833, Apprentices, § 1. In its earliest paternity act, the Illinois legislature created three possibilities relating to the cus-

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lock and Maitland, History of English Law, 397 (2nd ed.; Queen v. Brighton, 121 Eng. Rep. 782, 783 (K.B. 1861), (Comment of Cockburn, J., upon the argument); Horner v. Horner, 161 Eng. Rep. 573, 578 (Ch., 1799).

While petitioner cites Kent for the proposition that "the putative father might assert a right to the custody of the child as against a stranger," (Pet's. Br. 62) with all respect to the learned James Kent, the statement cannot be supported. The lone case cited by Kent for the assertion that there is a possible right to custody in the father is Rex v. Cornforth, 2 Stranges Rep. 1162, (1742). That report reads in its entirety.

> "The court granted an information against the defendants for taking away a natural daughter under sixteen, under the care of her putative father: being of the opinion it was within the third sect. of 4 and 5 Phil. & M. c.8."

That statute provided that the father or mother *or any person* having lawful custody of a young maiden could maintain an action for her recovery, 4 and 5 Phil. & M. c. 8, § 3 (1557). Rex v. Cornforth, supra, and the case of The Guardians of St. Mary Abbots', Kensington, 4 T.L.R. 63 (1887) are similarly and erroneously cited for the assertion of residual rights in the putative

tody and support of an illegitimate child. First, if the reputed father paid into the court a "bond and security" for the care and maintenance of the child, he was entitled to custody of the child upon demand. Second, if the reputed father paid the required "bond and security" but the mother refused to surrender the child to the father on demand, he was thereafter released from any obligation to support the child. Third, if the father failed to post the proper "bond and security," he would be obligated to pay up to $50 per year, for seven years, for the support of the child. In the latter case, the father was not entitled to custody of the child. The act further provided that marriage of the parents legitimated the child. Revised Laws of Illinois, 1833, Illegitimate Children.

In the case of *Wright* v. *Bennett*, 7 Ill. 587 (1845), suit was brought by a child's mother pursuant to this act. After being adjudicated as the father, the plaintiff demanded custody of the child. Despite the inhumanity of the situation, the Supreme Court of Illinois ordered the child placed in the custody of the illegitimate father.

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father in 2 Hallisbury's Laws (1st ed.) § 751. St. Mary Abbots' held only that the father of an illegitimate child has no legal right to the custody of the child, but if he was in a proper position to receive him, St. Mary Abbots' could properly give the child to him. St. Mary Abbots' is more properly cited by the Court of Appeals for the proposition that even upon the death of the mother, the putative father had no rights in a child. Re M, 2 Q.B.D. 479 (1955).

The erroneous interpretation of those cases by Hallisbury and Kent is corrected in the third edition of Hallisbury's Laws which notes that on the death of the mother, the father has no right to the child. 3 Hallisbury's Laws (3rd ed.) §§ 167, 169. This rule is, and always has been, the law of England.

By 1872, the mother was permitted to retain custody of the child, at least until it reached the age of ten (10) years, an annotation to the statute noting that it was passed ". . . to prevent the barbarous proceeding as warranted by a former law in *Wright* v. *Bennett,*" Comment, Underwood, W. H., Ill. Rev. Stat. 1879, Ch. 17, § 13, April 3, 1872.

This state of the law continued, with minor changes in support levels, until 1946, when, as petitioner notes (Pet's. Br. 34, 64), the Illinois Attorney General ruled that under the custody provisions of the 1872 Bastardy Act, the putative father's rights must be terminated before adoption and the case of *In re Richards,* 328 Ill. App. 591 (1946), was decided. In that case, a putative father, after unsuccessfully denying paternity, refused to contribute to the support of the child. Because of her poverty, the mother placed the child for adoption. The illegitimate father then attempted to prevent an adoption of the child and gain custody himself. The result was the Bastardy Act of 1949 which provided that the putative father of a child born out of wedlock had no right to custody of the child, except pusuant to an adoption proceeding initiated by him. Ill. Rev. Stat. 1949, Ch. 17, § 13.[10] Although a

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10. England went through a parallel experience between 1950 and 1958. The Adoption Act of 1950, 14 Geo. 6, c. 26, § 2(4)a, provided that the consent of a person under an order rendering him liable to maintain a child must be required in case of an adoption. It took Parliament but eight years to realize the error of equating the duty to maintain a child with the right to prevent that child from obtaining a stable family home and the Act was repealed by the Adoption Act of 1958, 7 and 8 Eliz. 2, c. 5, § 59.

putative father is liable for the support of his child born out of wedlock, Ill. Rev. Stat. 1969, Ch. 106¾, § 52, only a "parent" is personally liable for malicious damage to persons or property by the minor (Ill. Rev. Stat. 1969, Ch. 70, § 53). Only a "parent" or legal guardian has the following responsibilities: criminal liability for abandonment of the child (Ill. Rev. Stat., 1969, Ch. 23, § 2359, for the child's truancy from school (Ill. Rev. Stat., 1969, Ch. 122 § 26-10), for knowingly permitting the child to associate with thieves, visit a place of prostitution, or violate a curfew ordinance (Ill. Rev. Stat., 1969, Ch. 23, § 2369), and criminal liability for a deliberate failure to feed the child resulting in death [See: *Commonwealth* v. *Hall,* 322 Mass. 523, 78 N.E. 2d 644 (1948)]. The consent of the "parent" or legal guardian is required before the child may marry (Ill. Rev. Stat., 1969, Ch. 89, § 3), obtain a hunting license (Ill. Rev. Stat., 1969, Ch. 61, § 186), undergo surgery (Ill. Rev. Stat., 1969, Ch. 91, § 18-2), or possess firearms (Ill. Rev. Stat., 1969, Ch. 38, § 83-4).

Together with his limited liability toward the child, Illinois has limited the illegitimate father's rights in the child. He has no right to custody except by marriage to the child's mother, which legitimates the child, Ill. Rev. Stat., 1969, Ch. 3, § 12; Ch. 89, § 4, or by means of an adoption proceeding initiated by him, Ill. Rev. Stat., 1969, Ch. 106¾, § 62. Whether the child born out of wedlock is legitimated by marriage, adoption by the putative father, or adoption by strangers, the new parent may have the child's original birth certificate impounded and a new certificate of birth issued showing the child to be lawfully born to the adopting or legitimating person, Ill. Rev. Stat., 1969, Ch. 111½, § 73-17.

If a man is adjudicated to be the child's father in a paternity proceeding, the court retains jurisdiction over the

child and on motion of the illegitimate father, may make all orders necessary for the maintenance, education, and welfare of the child. Ill. Rev. Stat., 1969, Ch. 106¾, § 59. If the mother of the child is unfit, the illegitimate father may petition for adoption without her consent, Ill. Rev. Stat. 1969, Ch. 4, § 9.1-1, or to have the child removed from her custody as being neglected, Ill. Rev. Stat. 1969, Ch. 37, § 702-4(1).

Upon the death of the mother of a child born out of wedlock, the child is by definition an orphan, Ill. Rev. Stat. 1969, Ch. 37, § 701-14. A child without a parent is defined as dependent, Ill. Rev. Stat. 1969, Ch. 37, § 702-5(1), and upon petition, the Juvenile Court may appoint a guardian for the child. Ill. Rev. Stat. 1969, Ch. 37, §§ 705-2, 705-7. A guardian in custody of a child pursuant to an order of the Juvenile Court is subject to the full range of parental responsibilities toward the child, Ill. Rev. Stat. 1969, Ch. 37, §§ 701-11, 701-12, although he does not have all the rights of a parent, Ill. Rev. Stat. 1969, Ch. 37, §§ 701-11, 701-16, and cannot consent to an adoption unless specifically authorized to do so by the court, Ill. Rev. Stat. 1969, Ch. 37, § 705-9.

An order of guardianship by the Juvenile Court is never final, but may be modified on application of any party interested in the welfare of the child, Ill. Rev. Stat. 1969, Ch. 37, § 705-8.*

In testing the validity of a classification assailed as violative of the equal protection clause of the fourteenth amendment, the burden of proof is upon the person at-

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*Petitioner asserts that this comprehensive legislation violates the equal protection guarantee in its application to putative fathers.

tacking the classification, *Goesaert* v. *Cleary*, 335 U.S. 464 (1948); *Morey* v. *Doud*, 354 U.S. 457 (1957). From a barren record, a state of facts opposing the legislative classification cannot be presumed, *Metropolitan Casualty Insurance Co. of New York* v. *Brownell*, 294 U.S. 580, 585 (1935), nor can the mere presentation of conflicting theories regarding the validity of the classification sustain the burden of one challenging the classification, *Ginsberg* v. *State of New York*, 390 U.S. 629, 641-2 (1968). Equally clear is the extensive scope of the discretion vested in the legislatures of the various states, *McGowan* v. *Maryland*, 366 U.S. 420, 425 (1961); *Truax* v. *Corrigan*, 257 U.S. 312, 357 (1921) (Mr. Justice Brandeis, dissenting.). This is particularly true where the legislative discretion affects children, *Prince* v. *Commonwealth of Massachusetts*, 321 U.S. 158, 167-8 (1944).

In contrast to the burden of proof which must normally be borne by the party assailing a classification, where a classification involves an infringement upon a fundamental right, the burden is upon the State to show a compelling interest in the object of the classification. *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969); *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Glona* v. *American Guarantee & Liability Insurance Co.*, 391 U.S. 73 (1968).

To state the object of the classification—the welfare of children—is to state a compelling interest. While we will demonstrate that the classification herein questioned involves no invasion of a fundamental right, *Labine* v. *Vincent*, —— U.S. —— (1971); we shall also demonstrate that even were this not so, the interest of the State in the welfare of children and the procreation of the species by and through the marriage relationship is such a compelling state interest that the statutes must still be upheld as necessary to their objective.

The mere fact of classification by a legislature results in advantages to some and disadvantages to others. This is inherent in making a classification.[11] There are, however, disadvantages which are in the best interests of society.[12] The equal protection clause of the Constitution ". . . only prescribes that the law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons, merely as such, but on persons according to their relations." *Magoun* v. *Illinois Trust and Savings Bank,* 170 U.S. 283 (1898). See also: *Labine* v. *Vincent,* —— U.S. —— (1971); *De Sylva* v. *Ballentine,* 351 U.S. 570 (1956); *Traux* v. *Corrigan,* 257 U.S. 312, 350 (1921) (Mr. Justice Pitney, dissenting). In light of these requirement, we turn to a discussion of the Illinois statute defining "parent".

By defining "parent" to exclude putative fathers of illegitimate children, Illinois has attemped to confront realistically and to treat a problem in an area in which the states have a legitimate, and indeed compelling, governmental objective. The problem is the care, training and education of those children for whom no adult will voluntarily assume legal responsibility. The State's governmental objective is the protection of those of its citizens who are unable to care for themselves. The issue presented by this case is whether Illinois has chosen a reasonable means of dealing with this problem.

Fundamental to the state is the welfare of its children. While the rearing of children within a marriage is an

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11—Kotch v. Board of River Pilot Com'rs., 330 U.S. 552, 563 (1947).

12—Heisler v. Thomas Colliery Company, 260 U.S. 245, 255 (1922).

inherent right of parenthood,[13] "[t]he State also has an independent interest in the well being of its youth,"[14] and can regulate even the rights of married parents over their children. No right, including freedom of religion, is entitled to paramount consideration over the state's reasonable attempts to secure the welfare of its children, *Prince* v. *Commonwealth of Massachusetts*, 321 U.S. 158 (1944).

The rights of married parents to raise and educate their children are not absolute.[15] The State may in-

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13. New York ex rel. Halvey v. Halvey, 330 U.S. 610, 613 (1947);
Ginsberg v. State of New York, 390 U.S. 629, 638 (1968);
Prince v. Commonwealth of Mass., 321 U.S. 158, 166 (1944).

14. Ginsberg v. State of New York, 390 U.S. 629, 640 (1968).

15. The question of the circumstances under which the state can remove the control of children from the custody of legal parents has been the source of ultimate confusion. The test has been defined as limited except for the grossest misconduct, King v. Greenhill, 4 A. & E. 624, 639 (K.B. 1836); that a fit parent cannot be deprived of custody or control, Roche v. Roche, 152 P. 2d. 999 (Cal. 1944); Stout v. Stout, 166 Kan. 459, 201 P. 2d 637 (1949); as a parental right subject to the best interests of the child, Sturtevant v. State of Nebraska ex rel. Havens, 19 N.W. 617 (1884) and as a superior parental right subject to the qualification that "it is not necessary that the natural parent be found unfit in order to award custody of his child." Pace v. Wood, 50 Ill. App. 2d 63, 68, 200 N.E. 2d 125, 127 (1964). The conflicting considerations are ably summarized by Black, J., concurring in Ernst v. Flynn, 373 Mich. 337, 129 N.W. 2d 430 (1964), who stated:

terfere with this relationship when the welfare of the child so requires.[16] Logically, the State may intervene in a similar situation involving a child whose parents are not married to each other. No government has an interest in protecting only legitimate children. Indeed, the only relevant consideration in determining the propriety of governmental intervention in the raising of children is whether the best interests of the child are served by such intervention.

In effect, Illinois has imposed a statutory presumption that the best interests of a particular group of children necessitates some governmental supervision in certain clearly defined situations. The group of children who are illegitimate are distinguishable from legitimate children not so much by their status at birth as by the factual differences in their upbringing. While a legitimate child usually is raised by both parents with the attendant familial relationships and a firm concept of home and identity, the illegitimate child normally knows only one parent—the mother. This may be the result of innumerable factors—the natural father may be married to another woman, the natural mother may be married to another man, the natural mother and father have no de-

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"we do have 'two irreconcilable lines of cases'—pure shuttlecock law that is—for whimsical application to child custody controversies." 129 N.W. 2d at 439.

The confusion between the interests of the child and rights of the illegitimate father that appears in the briefs filed on behalf of petitioner herein is but an example of that "shuttlecock law."

16. The death of a married parent having a right of custody is such an occasion. Ex parte Day, 189 Wash. 368, 65 P. 2d 1049 (1937).

sire to marry and provide a two-parent home for the child, or the natural father may not know of or want the child.

Clarity requires a reference to the alleged facts of this case for a moment. The petitioner has premised his argument upon particular factual circumstances—a lengthy relationship with the mother of two children whose paternity he admits in the proceedings below, a familial relationship with the two children, and a general assumption that this relationship approximates that in which the natural parents are married to each other.

The petitioner thus attempts to characterize himself as a defacto father. Even if this characterization were accurate (the record is insufficient to support it) it would not affect the validity of the statutory definition of parent. If a classification is otherwise valid, the existence of occasional factual dissimilarities among members of the class is insufficient to void the classification, *McGowan* v. *Maryland*, 366 U.S. 420 (1961); *Jacobson* v. *Massachusetts*, 197 U.S. 11 (1905). There can be no question that illegitimate children who are not placed with state agencies or given out for adoption normally are raised by only one of their natural parents—the mother. The petitioner does not deny that the children are illegitimate. The record reflects their natural mother's death. Given these two factors, grounds exist for the State's intervention to ensure adequate care and protec-

tion for these children. This is true whether or not this particular petitioner assimilates all or none of the normal characteristics common to the classification of fathers who are not married to the mothers of their children.

Petitioner asserts that the definition of parent is invalid at two levels: that comparing putative fathers to married fathers, and that comparing putative fathers to unmarried mothers. We will treat this argument on both levels.

The comparison of married and putative fathers involves exclusively factual differences. The most significant of these are the presence or absence of the father from the home on a day-to-day basis and the responsibility imposed upon the relationship. Normally, a father married to the mother of his children lives with them, creating the basic family unit upon which our society is based. Indeed, procreation of the race through the marital relationship is a basic civil right which the State encourages. See: *Skinner* v. *Oklahoma,* 316 U.S. 535 (1942); *Loving* v. *Virginia,* 388 U.S. 1 (1967). In furtherance of its interests in the marriage relationship, states have adopted overwhelming presumptions of legitimacy shy of a showing of nonaccess, *Patterson* v. *Gaines,* 47 U.S. 550 (1848), and even forbidden a married mother to bastardize her child by bringing a paternity action when the child was born in wedlock, *Kennelly* v. *Davis,* 221 So. 2nd 415 (Fla. 1969) *cert. den.* 396 U.S. 916 (1969). The State has also imposed responsibilities upon this relationship. The married father is legally responsible for the support and upbringing of his family. In Illinois,

the married parents are criminally responsible for certain actions of their children as well as civilly liable for their children's malicious damage to another's property.

The putative father normally does not live with the mother of his illegitimate children on a permanent basis. He establishes no fixed family unit, but only a transient relationship in which he bears no responsibilities other than the pecuniary obligation of support, which requires court action by the mother before it is enforceable. In practice, a putative father often has no responsibilities either to the mother or to his illegitimate children. While this situation may be required to preserve other legal relationships, such as the mother's marriage to another man or the putative father's marriage to another woman, *Labine* v. *Vincent*, —— U.S. —— (1971), it certainly provides a valid distinction between the putative father and the married father in the nature of their relationships with their natural children. Such a distinction sustains a statutory classification under the equal protection clause. *Tigner* v. *Texas*, 310 U.S. 141 (1940).

We turn now to the second level of petitioner's argument—that the definition of parent unreasonably distinguishes between the natural father and the natural mother of children born out of wedlock. From a silent record the petitioner asks this Court to assume that a classification based upon sex is irrational. However, ". . . the role of the father within his family and his relationship with his children appear to be further removed from the instinctual roots than those of the mother." Therese Benedek, "Fatherhood and Providing", *Parenthood*, (Anthony and Benedek, editors, 1970), p. 167.

Mothering, on the other hand, is the result of the primary sexual drives of females.[17] The male's biological tendencies toward becoming and being a father are ". . . based upon the assumption that there are two sources of fatherlyness: one, biological bisexuality; and the other, the biological dependancy on the mother." T. Benedik, "Parenthood as a Developmental Phase," 7 J. Am. Psychoanalytic Assoc. 389, 398 (1959).

Unlike females, the male's parental functions do not involve specific physiologic process. There is no hormonal stimulation.[18] Both with animals,[19] and with human beings,[20] the level of female hormones can affect behavior toward the young.[21]

While temperament toward child rearing may be largely a product of societal conditioning,[22] these temperamental patterns have been so deeply ingrained within western civilization that they cannot be ignored. *Hoyt* v. *Florida,* 368 U.S. 57, 63 (1967).

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17. Therese Benedek, "Parenthood as a Development Phase", 7 J. Am. Psychoanalytic Asso. 389 (1959).

18. Id., at 399.

19. Sylvia Brody, Patterns of Mothering, p. 32-40, (International U. Press, Inc., 1958).

20. Id., at 60, 63.

21. Therese Benedek, "Discussion of The Evolution and Nature of Family Sexuality In Relation to Psychoanalytic Theory", 16 J. Am. Psychoanalytic Assoc. 424, 436-7 (1968).

22. Margaret Mead, Sex and Temperament (Laurel ed. 1968).

> "The mother's nurturing tie to her children is apparently so deeply rooted in the actual biological conditioning of conception and gestation, birth and suckling, that only complicated social arrangements can break it down entirely * * * but the evidence suggests that we should phrase the matter differently for men and women—that men have to learn to want to provide for others, and this behavior, being learned, is fragile and can disappear under social conditions that no longer teach it effectively." Margaret Mead, Male and Female, p. 197 (Laurel ed., 1968).[23]

The chosen institution of the state is marriage. The rationale of the institution is what makes it a fundamental concern of the States.[24]

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23. In the omitted portion quoted above, Dr. Mead also notes that "where society has so overdone the ritual of legitimacy that men are kept good providers only at the cost of social ostracism of the unmarried mother, the mother of an illegitimate child may abandon it or even kill it."

24. While, in the context of marriage, courts have spoken of parental rights as inherent, New York ex rel. Halvey v. Halvey, 330 U.S. 610, 613 (1947) or sacred private interests, Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 165 (1944), the rights that parents do have are for the benefit of the child. United States v. Green, 26 Fed. Cas. 30 (1824). Chapsky v. Wood, 26 Kan. 650 (1881).

The state's interest in children is independent, Ginsberg v. New York, 390 U.S. 629, 639 (1968), part of its

That at the moment of birth a mother must be present is necessary by definition. The married father is usually present to lend his aid and succor. The unmarried father is not generally present. The married male, by his marriage contract with the female and the State, undertakes and is legally bound to support, care for, and maintain his children from the moment of birth. While many states have made the unmarried father civilly and criminally liable for the maintenance of his children, fatherhood is more than support. The married male and the female, whether she is married or not, are required to attend to the schooling, medical care, and other needs of the children.[25] The most that society requires of the un-

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police power, Prince, supra, at 169, and the first consideration in a custodial battle. Ford v. Ford, 371 U.S. 187, 193 (1962); New York ex rel. Halvey v. Halvey, supra., at 616 (Mr. Justice Frankfurter, concurring). Not since Eyre v. Countess of Shaftsbury, 24 Eng. Rep. 659, (Ch. 1722) and Blisset's Case, 98 Eng. Rep. 899, 890, (K.B. 1774) has it ever been questioned that the power of the state as *parens patriae* is paramount. Thus, the courts can interfere in the custody of children, "for the protection of infants, qua infants, by virtue of the prerogative which belongs to the Crown as parens patriae, and the exercise of which is delegated to the Great Seal." Queen v. Gyngall, 2 Q.B.D. 232 (1893).

25. While the state has imposed the full range of parental duties on the mother of a child born out of wedlock and granted her the full range of parental rights, it has imposed but limited duties and rights on the unmarried father.

> "This may be explained by historical experience from which it is assumed that the overwhelming percentage of fathers of out-of-wedlock children are not interested in their children, in recognizing them, in

married male upon the birth of the child is money payments.[26] To give the unmarried male the advantage of

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supporting them, in legitimating them, or especially in seeking their custody." In re Brennan, 270 Minn. 455, 460, 134 N.W. 2d 126, 131 (1965).

While not determinative, Harper v. Virginia State Board of Elections, 383 U.S. 663, 669 (1966), history, Kotch v. Board of River Port Commissioners, 330 U.S. 552, 557 (1947), the traditions of society, Tigner v. Texas, 310 U.S. 141, 149 (1940) and an historic public policy of family responsibility must be considered in evaluating the legislative judgment. Hoyt v. Florida, 368 U.S. 57, 63

History also demonstrates that in devising the Illinois statutory scheme, the legislature property took account of the fact that custody fights over children are used as a means of extortion in bastardy proceedings, In re Richards, supra p. 13, Wright v. Bennett, supra p. 13, as economic and emotional levers in divorce proceedings, Andrew Watson, "The Children of Armageddon", 21 Syracuse L. Rev. 55, 59 (1969), as a means of gaining control over an inheritance, Ex parte Hopkins, 24 Eng. Rep. 1009 (Ch. 1732), and, as in this case, as a means of controlling funds due children, supra p. 6.

These custody battles are not to the good of the children involved, New York ex rel. Halvey v. Halvey, 330 U.S. 610, 619 (1947) (Mr. Justice Rutledge, concurring). With respect to children born out of wedlock, the Illinois legislature has minimized these uses to which custody battles may be put by looking solely to the best interests of the child.

26. Various states have made putative fathers liable for failure to support their biologic offspring, some prior to paternity proceedings, Moreno v. Superior Court of Pima County, 414 P. 2d 749 (Ariz. 1966), and some only after an adjudication of paternity, Turner v. State, 104 So. 2d 775 (Ala. App. 1964). No state has, however, imposed the full range of parental responsibilities on the

choosing between only support and the full range of parental responsibilities, is to put, for the unmarried male, a premium on procreating out of wedlock. So considered, it would deny equal protection of the law to the married male and to married and unmarried females, to grant this option to the unmarried male at the birth of a child.[27]

Thus, the distinction drawn by Illinois between responsible, physically present mothers and fathers, and putative fathers who are neither legally responsible nor physically present in the home on a permanent basis is a valid classification based upon identifiable differences among the people affected.

The only remaining question then is whether this classification is a reasonable means of insuring the welfare of minor children within the State. In making this evaluation, it of course is irrelevant whether the State might have chosen other methods of achieving the same result. "The Constitution is satisfied if a legislature responds to the practical living facts with which it deals.

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putative father upon the birth of the child. Nor has any state granted, by virtue of the biologic relationship at birth, the status of a married parent. See Appendix B of the instant Brief.

27. To grant after the birth of the child rights of the putative father over the child, and to force upon the child obligations to his illegitimate father, Ill. Rev. Stat. 1965, Ch. 23, § 112, solely by volition of the father and without consulting the interests of the mother or child, would violate due process of law toward the mother and child, Day v. Hatton, 210 Ga. 749, 83 S.E. 2d 7 (1954); Harry Krause, "The Non-Marital Child," 1 Fam. Law Quarterly 1, 6 (1967); Compare, Rule v. Geddes, 23 App. D.C., 31, 50 (1904).

Through what precise points in a field of many competing pressures a legislature might most suitably have drawn its lines is not a question for judicial reexamination. It is enough to satisfy the Constitution that in drawing them the principle of reason has not been disregarded. . . ." *McGowan* v. *Maryland*, 366 U.S. 420, 459 (1961) (concurring opinion of Mr. Justice Frankfurter).

Illinois does not preclude putative fathers from obtaining the custody of their natural children. To the contrary, the State has provided procedures whereby the father may legitimate and assume the guardianship of the children or he may adopt them. Thus, a putative father who is willing to accept parental responsibilities for the children may obtain their custody upon a showing that he is a fit parent in whose custody the bests interests of the children would be served.[28] Petitioner, however, argues that requiring the putative father to make such a showing violates the equal protection guarantee since neither married parents or the unmarried mother are required to make such a showing to obtain custody of their natural children. This argument ignores the

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28. By looking only to the best interests of the child, a trial court must necessarily weigh petitioner's assertion of a biologic and familial relationship, if one exists, Paul Sayer, "Awarding Custody of Children", 9 U. Chi. L. Rev. 672, 684 (1942). Under this statutory scheme it was unnecessary at the time of the hearing here in question, and still is unnecessary, to reach the question of petitioner's fitness. Petition of Malmstedt, 243 Md. 92, 220 A. 2nd 147, 149 (Md. App., 1966); cert. denied 385 U.S. 976 (1966); Wright v. Wright, 2 Mass. 109, 110 (1806).

factual and legal differences between putative fathers and those persons defined by the statute as "parents".[29] In most instances, the natural father is a stranger to his children. In all cases, the natural father has only the legal duty of rendering financial support to his children and is subject to no other responsibilities toward the child. To equalize these factual differences between putative fathers and those persons defined as parents, Illinois requires the petitioner and others similarly situated to subject themselves to a legal proceeding evidencing their desire to assume the legal responsibilities inherent in the physical custody of children.

This proceeding approximates an adoption or guardianship proceeding instituted by a person bearing no blood relationship to the child and in which the best interest showing is required. These proceedings are clearly distinguishable from both the marital relationship and the situation involving unwed mothers. In these latter instances, the State presumes that custody would be in

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29. Were this case an application for writ of habeas corpus by petitioner to regain custody of the children, his custodial rights would clearly be subject to a showing of the best interests of the children in determining a change of custody. The test has been applied to legal fathers, Green v. Campbell, 35 W. Va. 698, 14 S.E. 212 (1891); Trenton v. Christ, 216 Md. 418, 140 A. 2d 660 (1958); to the legal mother. In re Hope, 19 R.I. 486, 34 A. 994 (1896); and to a mother who left a child with its illegitimate father, Comm. ex rel. Settlemire v. Stephens, 127 Pa. Super 188, 193 A. 80 (1937). Admitting that under these standards he is in no position to demand custody of the children (Pet's. Br. 13-14), the petitioner nevertheless maintains that the best interest of the child test is irrational as applied to the question of legal responsibility.

the best interests of the child due to the interest of the State in perpetuating the marriage relationship or, in the case of the unwed mother, a combination of the presumption that a mother is better suited to caring for her child than even the natural father with the need of making at least one person legally responsible for the welfare and protection of a minor child. Both of these presumptions, however, may be overcome. The State, to protect its paramount interest in the welfare of the child, may interfere in the marital or the mother-child relationship if the best interests of the child so require. See footnote 15, *infra*.

The proceeding involving either a putative father or other persons seeking custody is distinguishable on several bases. First, the children are in existence and are, therefore, individuals whose personalities and needs are both measurable and relevant to the case.[30] Second, the persons seeking custody are distinguishable both factually and legally from those people defined as parents. And third, the proceeding will have the effect of allocating responsibilities by court order which are automatically vested upon "parents" regardless of their personal preferences.

Illinois has adopted a comprehensive statutory pattern to protect minor children from abuse and neglect. The plan treats those subject to its provisions according to their needs and responsibilities. The classification distinguishing putative fathers, from persons defined as "parents" is a reasonable method of imposing upon natural fathers by court order the obligations imposed automatically upon "parents" by statute. The legislature

30. Harry Krause, "Equal Protection for the Illegitimate," 65 Mich. L. Rev. 477, 484 (1967).

has attempted to equalize two very different interests—that of "parents" and that of putative fathers—in a manner consistent with the ultimate objective of protecting the best interests of the child. There is no constitutional infirmity.

CONCLUSION

The State of Illinois respectfully requests that the judgment of the Supreme Court of Illinois be affirmed.

Respectfully submitted,

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APPENDIX "A"

STATUTORY PROVISIONS

Illinois Revised Statutes, 1969, Chapter 3 (Administration of Estates)

Section 12-8 (illegitimates)

1969 State Bar Association Edition, Vol. 1, 37.

An illegitimate child is heir of his mother and of any maternal ancestor, and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take, by descent, any estate which the parent would have taken, if living. An illegitimate child whose parents intermarry and who is acknowledged by the father as the father's child shall be considered legitimate.

Illinois Revised Statutes, 1969, Chapter 4, (Adoption).

Section 9.1-1 (definitions).

1969 State Bar Association Edition, Vol. 1, 86-7.

When used in this Act, unless the context otherwise requires:

A. "Child" means a person under legal age subject to adoption under this Act;

B. "Related child" means a child subject to adoption where either or both of the adopting parents stands in any of the following relationships to the child by blood or marriage: parent, grand-parent, brother, sister, step-parent, step-grand-parent, step-brother, step-sister, uncle, aunt, great-uncle, great-aunt, or cousin of first degree;

C. "Agency" for the purpose of this Act means a public child welfare agency or a licensed child welfare agency;

D. "Unfit person" means any person whom the court shall find to be unfit to have a child sought to be adopted, the grounds of such unfitness being any one of the following:

(a) Abandonment of the child;

(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare;

(c) Desertion of the child for more than 3 months next preceding the commencement of the Adoption proceeding;

(d) Substantial neglect of the child if continuous or repeated;

(e) Extreme or repeated cruelty to the child;

(f) Failure to protect the child from conditions within his environment injurious to the child's welfare;

(g) Other neglect of, or misconduct toward the child; provided that in making a finding of unfitness the court hearing the adoption proceeding shall not be bound by any previous finding, order, judgment or decree affecting or determining the rights of the parents toward the child sought to be adopted in any other proceeding except such proceedings terminating parental rights as shall be had under either this Act or the Juvenile Court Act;

(h) Depravity;

(i) Open and notorious adultery or fornication;

(j) Habitual drunkenness for the space of one year prior to the commencement of the adoption proceeding.

E. "Parent" means the father and mother of a legitimate child, the surviving parent of a legitimate child, or the natural mother of an illegitimate child;

F. "In need of mental treatment" means any one or more of the following:

(a) Adjudged by a court to be in need of mental treatment pursuant to the provisions of the Mental Health Code;

(b) Adjudged by a court of competent jurisdiction to be insane or mentally ill under any prior law of this State;

(c) Adjudged by a court of competent jurisdiction to be insane pursuant to the provisions of any law of this State relating to criminal jurisprudence;

G. "Mentally retarded" as used in this Act shall mean either of the following:

(a) Adjudged by a court to be mentally retarded pursuant to the provisions of the Mental Health Code; or

(b) Adjudged by a court of competent jurisdiction to be feebleminded under any prior law of this State;

H. A person is available for adoption when:

(a) A child has been surrendered for adoption to an agency and to whose adoption such agency has thereafter consented;

(b) A child to whose adoption a person authorized by law, other than his parents, has consented, or to whose adoption no consent is required pursuant to Section 8 of this Act;

(c) A child is in the custody of persons who intend to adopt him through placement made by his parents;

(d) An adult meets the conditions set forth in Section 3 of this Act;

I. The singular includes the plural and the plural includes the singular and the "male" includes the "female", as the context of this Act may require.

Illinois Revised Statutes, 1969, Chapter 37, (Juvenile Court Act).

Section 701-11 (guardianship)

1969 State Bar Association Edition, Vol. 1, 1562.

"Guardianship of the person" of a minor means the duty and authority subject to residual parental rights and responsibilities, to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned with his general welfare. It includes but is not necessarily limited to

(a) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to a major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; and to make other decisions of substantial legal significance concerning the minor;

(b) the authority and duty of reasonable visitation, except to the extent that these have been limited by the court order;

(c) the rights and responsibilities of legal custody except where legal custody has been vested in another person or agency; and

(d) the power to consent to the adoption of the minor, but only if expressly conferred on the guardian in accordance with Section 5—9.

Section 701-12 (legal custody)

1969 State Bar Association Edition, Vol. 1, 1562.

"Legal custody" means the relationship created by an order of court which imposes on the custodian the responsibility of physical possession of a minor and the duty to protect, train and discipline him

and to provide him with food, shelter, education and ordinary medical care, except as these are limited by residual parental rights and responsibilities and the rights and responsibilities of the guardian of the person, if any.

Section 701-14 (parents)
1969 State Bar Association Edition, Vol. 1, 1562.

"Parents" means the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child, and includes any adoptive parent. It does not include a parent whose rights in respect of the minor have been terminated in any manner provided by law.

Section 702-4 (1) (neglected minor)
1969 State Bar Association Edition, Vol. 1, 1563.

(1) Those who are neglected include any minor under 18 years of age.

(a) who is neglected as to proper or necessary support, education as required by law, or as to medical or other remedial care recognized under State law or other care necessary for his well-being, or who is abandoned by his parents, guardian or custodian; or

(b) whose environment is injurious to his welfare or whose behavior is injurious to his own welfare or that of others.

Section 702-5. (1) (dependent minor)
1969 State Bar Association Edition, Vol. 1, 1563-4.

Those who are dependent include any minor under 18 years of age (a) who is without a parent, guardian or legal custodian;

(b) who is without proper care because of the physical or mental disability of his parent, guardian or custodian; or

(c) who has a parent, guardian or legal custodian who with good cause, wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the adoption of the minor under Section 5—9.

Section 705-2 (c) (dispositional orders)

1969 State Bar Association, Edition, Vol. 1, 1563.

(c) A minor under 18 years of age found to be neglected under Section 2—4 may be (1) continued in the custody of his parents, guardian or legal custodian, or (2) placed in accordance with Section 5—7.

Section 705-7 (placement, legal custody, or guardianship)

1969 State Bar Association Edition, Vol. 1, 1569.

(1) If the court finds that the parents, guardian or legal custodian of a minor adjudged a ward of the court are unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train, discipline the minor or are unwilling to do so, and that it is in the best interest of the minor to take him from the custody of his parents, guardian or custodian, the court may

(a) place him in the custody of a suitable relative or other person;

(b) place him under the guardianship of a probation officer;

(c) commit him to an agency for care or placement, except an institution under the authority of the Department of Corrections or of the Department of Children and Family Services;

(d) commit him to some licensed training school or industrial school;

(e) except in the case of a neglected or dependent minor under 18 years of age adjudged a ward of the court under Section 2—4 or 2—5, commit him to any appropriate institution have among its purposes the care of delinquent children, including a child protective facility maintained by a Child Protection District serving the county from which commitment is made, but not including any institution under the authority of the Department of Corrections or of the Department of Children and Family Services; or

(f) in the case of a neglected or dependent minor under 18 years of age adjudged a ward of the court under Section 2—4 or 2—5, commit him to the Department of Children and Family Services for care and service. The Department shall be given due notice of the pendency of such action and the Chief of the Division of Child Welfare of the Department shall be appointed guardian of the person of such minor. Whenever the Department discharges a minor from its care and service, the Chief of the Division of Child Welfare of the Department shall petition the court for an order terminating guardianship.

(2) When making such placement, the court, whenever possible, shall select a person holding the same religious belief as that of the minor or a private agency controlled by persons of like religious faith of the minor. In addition, whenever alternative plans for placement are available, the court shall ascertain and consider, to the extent appropriate in the particular case, the views and preferences of the minor.

(3) When a minor is placed with a suitable relative or other person, the court shall appoint him the legal custodian or guardian of the person of the minor. When a minor is committed to any agency, the court shall appoint the proper officer or representative thereof as legal custodian or guard-

ian of the person of the minor. Legal custodians and guardians of the person of the minor have the respective rights and duties set forth in Section 1-11 except as otherwise provided by order of court; but no guardian of the person may consent to adoption of the minor unless that authority is conferred upon him in accordance with Section 5—9. An agency whose representative is appointed guardian of the person or legal custodian of the minor may place him in any child care facility, but if such agency is an institution it must be licensed to place children in foster homes. Like authority may be conferred by the court upon any probation officer who has been appointed guardian of the person of a minor.

(4) The clerk of the court shall issue to such legal custodian or guardian of the person a certified copy of the order of court, as proof of his authority. No other process is necessary as authority for the keeping of the minor.

(5) Custody or guardianship granted hereunder continues until the court otherwise directs, but not after the minor reaches the age of 21 years.

Section 705-8 (change of custody)

1969 State Bar Association Edition, Vol, 1, 1570.

(1) The court may require any legal custodian or guardian of the person appointed under this Act to report periodically to the court or may cite him into court and require him or his agency to make a full and accurate report of his or its doings in behalf of the minor. The custodian or guardian, within 10 days after such citation, shall make the report, either in writing verified by affidavit or orally under oath in open court, or otherwise as the court directs. Upon the hearing of the report the court may remove the custodian or guardian and appoint another in his stead or restore the minor to the custody of his parents or former guardian or custodian.

(2) The minor or any person interested in the minor may apply to the court for a change in custody of the minor and the appointment of a new custodian or guardian of the person or for the restoration of the minor to the custody of his parents or former guardian or custodian. No legal custodian or guardian of the person may be removed without his consent until given notice and an opportunity to be heard by the court.

Section 705-9 (power of guardian to consent to adoption)

1969 State Bar Association Edition, Vol. 1, 1570.

(1) A ward of the court under this Act, with the consent of the court, may be the subject of a petition for adoption under "An Act in relation to the adoption of persons, and to repeal an Act therein named", approved July 17, 1959, as heretofore or hereafter amended, or with like consent his parent or parents may, in the manner required by such Act, surrender him for adoption to an agency legally authorized or licensed to place children for adoption.

(2) If the petition prays and the court finds that it is in the best interests of the minor that a guardian of the person be appointed and authorized to consent of the parents, if living, or after finding a non-consenting parent to be unfit as provided in this Section, may empower the guardian of the person of the minor, in the order appointing him as such guardian, to appear in court where any proceedings for the adoption of the minor may at any time be pending and to consent to the adoption. Such consent is sufficient to authorize the court in the adoption proceedings to enter a proper order or decree of adoption without further notice to, or consent by, the parents of the minor. An order so empowering the guardian to consent to adoption terminates parental rights, deprives the parents of the minor of all legal rights as respects the minor and

relieves them of all parental responsibility for him, and frees the minor from all obligations of maintenance and obedience as respects his natural parents.

(3) Parental consent to the order authorizing the guardian of the person to consent to adoption of the Minor shall be given in open court whenever possible and otherwise must be in writing and signed in the form provided in "An Act in relation to the adoption of persons, and to repeal an Act therein named", approved July 17, 1959, as heretofore or hereafter amended, but no names of petitioners for adoption need be included. A finding of the unfitness of a nonconsenting parent must be made in compliance with that Act. Provisions of that Act relating to minor parents and to mentally ill or mentally deficient parents apply to proceedings under this Section.

Illinois Revised Statutes, 1969, Chapter 89, (Marriage) § 4 (effect of marriage)

1969 State Bar Association Edition, Vol. 2, 573.

Marriages may be celebrated either by a minister of the gospel in regular standing in the church or society to which he belongs by a judge or magistrate of any court of record, or if the parties, or either of them, are members of the religious society known as Friends or Quakers, they may lawfully be married by making known their intentions to marry to a standing committee of any official meeting at least one week before such marriage is consummated, and by appearing in a public meeting or private gathering before official witnesses of that body, with a certificate duly setting forth the names and residence of each contracting party, and of the parents of each, if living, which certificate shall be signed by the contracting parties and the official witnesses and shall be publicly read by one of the witnessing parties and afterwards duly recorded upon the records of an organized meeting of the society.

However, all marriages commonly known as "common law marriages" entered into after June 30, 1905 are null and void unless after the contracting and entering into of any such common law marriage a license to marry be first obtained by such parties who have entered into such common law marriage and a marriage be solemnized as provided by this Act in the same manner as is provided for persons who have obtained a license to be joined in marriage and are about to be joined in any such marriage. And any children born to parties who have entered into such common law marriage shall be and are deemed legitimate upon the parents having obtained a license to marry and are married in the manner provided in this Act.

Ill. Rev. Stat. 1969, Ch. 106¾ (Paternity)

Section 51 (definitions)

1969 State Bar Association Edition, Vol. 2, 1291.

For the purposes of this Act a "child born out of wedlock" is a child whose parents were not married to each other at the time of its birth; provided that a child shall not be considered as born out of wedlock if its parents were married at the time of its conception but divorced at the time of its birth, or if after the conception or birth of the child, the marriage of its parents is declared void for any reason. The definition of legitimacy or illegitimacy for other purposes shall not be affected by this Act.

Section 52 (liability of father and mother to child)
1969 State Bar Association Edition, Vol. 2, 1292.

The father of a child born out of wedlock whose paternity is established in a proceeding under this Act shall be liable for its support, maintenance, education and welfare, until the child's attainment of age 18 or until the child is legally adopted, to the

same extent and in the same manner as the father of a child born in lawful wedlock is liable for its support, maintenance, education and welfare.

The mother of a child born out of wedlock shall also be liable for its support, maintenance, education and welfare to the same extent as if the child had been born in lawful wedlock.

Section 59 (judgment-retention of jurisdiction)

1969 State Bar Association Edition, Vol. 2, 1293.

If the defendant has acknowledged that he is the father of the child, either at the preliminary hearing provided in Section 5 or at the subsequent trial of the issue, which acknowledgment he has not repudiated at the trial of the issue, or if on the trial of the issue the court or jury, as the case may be, finds that he is the father, the court shall enter judgment to that effect. If such judgment is entered the court shall take evidence upon the requirements of the child for its support, maintenance, education and welfare, and upon the expenses of the mother during pregnancy, confinement and recovery, and for reasonable attorney's fees and shall enter an order with respect thereto. The order may be directed to the father or mother, or both. Except where a settlement order has been entered as provided in Section 9A of this Act, the court shall retain jurisdiction of the cause and may, upon proper prior written notice of the hearing to the parties in interest, make new or supplementary orders for the support, maintenance, education and welfare of the child as from time to time the court deems necessary, upon petition of the mother, the father, any interested person who has contributed to the support, maintenance, education and welfare of the child or assumed its support, maintenance, education and welfare, or any governmental agency interested in the support, mainten-

ance, education and welfare of the child. Pending the initial determination of the support order, the court may make provision for bond and security to assure jurisdiction over the person of the defendant, and for the enforcement thereof by commitment of the defendant, in the manner provided in either Section 5 or 7 of this Act.

In determining the amount of support and confinement expenses to be charged to the father, the court shall take into account not only his financial condition and circumstances but also the income and resources of the mother which are or may be available for the support of the child.

Where the father of such child shall die after the adjudication that he is the father of the child and the entry of an order for support and confinement expenses, such unpaid amounts as to support and confinement expenses as shall have accrued at the date of the death of the father shall be a provable claim against the estate.

Section 62 (custody of child)

1969 State Bar Association Edition, Vol. 2, 1294.

A person charged or alleged to be the father of a child born out of wedlock, whether or not adjudicated the father under this Act, shall have no right to the custody or control of the child except such custody as may be granted pursuant to an adoption proceeding initiated by him for that purpose.

Illinois Revised Statutes, 1969, Chapter 111½, (Public Health)

Section 73-17 (new certificate of birth)

1969 State Bar Association Edition, Vol. 2, 1759-60.

(1) For a person born in this State, the State Registrar of Vital Records shall establish a new certificate of birth when he receives any of the following:

(a) A certificate of adoption as provided in Section 16 or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(b) A certificate of adoption or a certified copy of the decree of adoption entered in a court of competent jurisdiction of any other state or country declaring adopted a child born in the State of Illinois, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(c) A request that a new certificate be established and such evidence as required by regulation proving that such person has been legitimatized, or that a court of competent jurisdiction has determined the paternity of such a person.

(d) An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary.

(2) When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth:

(a) Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection or certifica-

tion except upon order of a court of competent jurisdiction or as provided by regulation.

(b) Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection or certification except upon order of a court of competent jurisdiction.

(3) If no certificate of birth is on file for the person for whom a new certificate is to be established under this Section, a delayed record of birth shall be filed with the State Registrar of Vital Records as provided in Section 14 or Section 15 of this Act before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed record shall not be required.

(4) When a new certificate of birth is established by the State Registrar of Vital Records, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this State shall be transmitted to the State Registrar of Vital Records as directed, and shall be sealed from inspection.

APPENDIX "B"*

ILLEGITIMATE CHILDREN: 50 STATE SURVEY

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
Alabama	Father has right against all but the mother, if he is competent to care for the child and evidence shows that it is in the best interest of the child. Lewis v. Crowell, 210 Ala. 199 (1923); Garrett v. Mahaley, 199 Ala. 606 (1917).	Yes—if child is destitute or in necessitous circumstances. Ala. Code Title 34, §89 (1958). Rouse v. State, 184 So. 2d 839 (Ala. App. 1966).	Only by mother unless paternity is established. Ala. Code Title 27, §3 (1958).	Only if child is legitimated. Bagwell v. Powell, 267 Ala. 19 (1957).	Written acknowledgment by father filed in Probate Court. Ala. Code, Title 27, §11 (1958), or intermarriage of parents plus recognition by father Title 27, §10.
Alaska			Only of mother, unless child is legitimated. Alas. Stat. Title 120 §20.10.040 (1967).	Only if child is legitimated. Alas. Stat. Title 13 §13.10.030 (1967).	Intermarriage of parents written acknowledgment by father or court adjudication. Alas. Stat. Ttile 25, §25.20.050 (1967).

			legitimated. Alas. Stat. Title 120 §20.10.040 (1967).	Alas. Stat. Title 13 §13.10.030 (1967).	acknowledgment by father or court adjudication. Alas. Stat. Ttile 25, §25.20.050 (1967).	
Arizona	Child has no right to dwell or reside with the family of his father if the father is married. Ariz. Rev. Stat 1956, §14-206. In awarding custody the court is guided by the best interest of the child, pre-	Yes—Ariz. Rev. Stat. 1956, §14-206.	Both natural parents if father acknowledges child or parentage is established. Ariz. Rev. Stat. 1956, §8-103.	Every child inherits from natural parents. Ariz. Rev. Stat. 1956, §14-206 (b).	Every child is the legitimate child of his natural parents. Ariz. Rev. Stat. 1956, §14-206 (a).	

*Appendix "B" prepared by Robert E. Davison, Assistant Attorney General, State of Illinois.

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
		sumption to natural parents. Ariz. Rev. Stat. 1956, §14-846.			
Arkansas		Yes—Ark. Stat. Ann. §34-706 (1947).	Only by mother unless paternity established. Ark. Stat. Ann. §56-106 (1947).	Child inherits from father only if legitimated. Ark. Stat. Ann. 1969, §61-14 (d).	Intermarriage of parents plus recognition of child. Ark. Stat.Ann. 1969, §61-141 (b).
California	Natural parents have equal right to custody if child is legitimated (adopted) by father. Cal. Civ.	Yes—Cal. Civ. Code §196 (Deering 1961).	Only by mother unless child is legitimated (adopted) by father. Cal. Civ. Code, §224 (Deering 1961).	Child is heir of person who, in writing, acknowledges himself to be the father, but child does not represent	Intermarriage of parents or the father by publicly acknowledging the child as his own, receiving the

		Code, §230 (Deering 1961); Guardianship of Castellanos, 198 Cal. App. 2d 190 (1961). See also In re Guardianship of Smith, 265 P. 2d 888 (Cal. 1954).			the father's kindred. (Cal. Prob. Code, §255 (Deering 1961)), unless legitimated. Cal. Civ. Code, §230 (Deering 1961).	child as such, with the consent of his wife if he is married, into his family, thereby adopts him, and the child is legitimate for all purposes. Cal. Civ. Code, §§215, 230 (Deering 1961).
	Colorado		Yes—Colo. Rev. Stat. 1963, Art. 43-2-1; Ortega v. Portales, 307 P. 2d 193 (Colo.1957).	Only by mother unless child is legitimated according to the laws of any jurisdiction. Colo. Rev. Stat. 1963, Art. 4-1-6.	Child inherits from father if parents intermarry and father recognizes child as his, or father acknowledges child to be his and regularly	Intermarriage of parents plus recognition. Colo. Rev. Stat. 1963, Art. 153-2-8.

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
				contributes to support of child. Colo. Rev. Stat. 1963, Art. 153-2-8.	
Connecticut	The mother of an illegitimate child is the sole guardian Conn. Stat. Ann. 1969, §45-43.	Yes—Conn. Stat. Ann. 1969, §52-442; State v. Wolfe, 239 A. 2d 509 (Conn. 1968).	Only by mother. Conn. Stat. Ann. 1969, §45-61.	Child inherits from father if parents intermarry. Conn. Stat. Ann. 1969, §45-274.	Intermarriage of parents. Conn. Stat. Ann. 1969, §45-274.
Delaware		Yes—Del. Code Ann. 1965, Title 13, §§1326, 1305.	Only by mother. Del. Code Ann. 1965, Title 13, §908.	Child inherits from father only if child is legitimated. Del. Code Ann. 1965, Title 13,	Intermarriage of parents prior to child's birth, or intermarriage after adjudication or acknowl-

				§1304.	edgment of parentage, or by written acknowledgment of both parents, if living, or by father if mother deceased, filed in Prothonotary's Office. Del. Code Ann. 1965, Title 13, §1301.	
Florida	Putative father is not considered a "father" and has no rights to the child. Clements v. Banks, 159 So. 2d 892 (Fla. App. 1964); Fla.	Yes—Fla. Stat. 1965, § 742.031.	Only by mother. Fla. Stat. 1965, § 72.14.	Child inherits from father if father, in writing before a witness, acknowledges himself to be the father. But, child does not rep-	Only by intermarriage of parents. Fla. Stat. 1965, § 742.091.	

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
	Stat. 1965, § 39.01(8). But see Mixon v. Mize, 198 So. 2d 373 (Fla. (App. 1967) (Visitation privileges).			resent father (~~or~~ mother) by inheriting any estate of the parents' kindred unless parents intermarry. Fla. Stat. 1965, § 731.29.	
Georgia	Custody of child, between parents, to be determined by court. Ga. Code Ann. 1964, § 74-107.	Yes—Ga. Code Ann. 1964, § 74-202.	Only by mother. Ga. Code Ann. 1964, § 74-404(3).	None unless child is legitimated. Ga. Code Ann. 1964, § 113-904, § 74-203.	Intermarraige of parents plus recognition, or by petition in the Supreme Court. Ga. Code Ann. 1964, §§ 74-101,.74-103.

Hawaii		Yes—if father acknowledges paternity or court determines paternity. Hawaii Rev. Stat. 1968, §§ 579-4, 577-14.	Only by mother unless child is legitimated. Hawaii Rev. Stat. 1969, § 578-2.	None—Hawaii Rev. Stat. 1968, § 577-14.	Intermarriage of parents. Hawaii Rev. Stat. 1968, § 577-14.
Idaho		Yes—Idaho Code, 1969, § 7-1105.	Only by mother. Idaho Code, 1965, § 16-1504.	Child is heir of the person who, in writing, acknowledges himself to be the father, but does not represent the father's kindred unless legitimated (marriage and acknowledgement, and means	The father by publicly acknowledging the child as his own, receiving the child as such, with the consent of his wife if he is married, into his family, thereby adopts him, and the child is deemed

State	Provision for Support by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
				provided in § 16-1510) Idaho Code, 1965, § 14-104.	legitimate. Idaho Code, 1965, § 16-1510.
Illinois	None—Ill. Rev. Stat. 1969, Ch. 106¾, § 62.	Yes, if paternity established. Ill. Rev. Stat. 1969, Ch. 106¾, § 52.	Only by mother. Ill. Rev. Stat. 1969, Ch. 4, § 9.1-8.	None unless child is legitimated or adopted by father. Ill. Rev. Stat. 1969, Ch. 3, § 12.	Intermarriage of parents and acknowledgement by father. Ill. Rev. Stat. 1969, Ch. 3, § 12.
Indiana		Yes—Burns Ind. Stat. 1968, § 3-624.	Only by mother unless paternity established by court and father has	Yes—Child inherits from father when paternity is established. Burns Ind. Stat. 1968,	Intermarriage of parents and acknowledgment by husband. Small v. State, 77

			contributed support and the father's address is known or can be found without expenditure exceeding $5.00. Burns Ind. Stat. 1969, § 3-120.	§ 6-207.	N.E. 2d 578 (1948); Selby v Brenton, 130 N.E. 448 (Ind. App. 1921),
Iowa		Yes—Iowa Code Ann. 1969, § 675.1.	Consent by parent having the care and providing the wants of the child. Iowa Code Ann. 1969, § 600.3.	Child inherits from father if paternity is proven or if father recognizes child. Iowa Probate Act, 1969, § 633.222.	Marriage of parents. In re Clark's Estate, 390 N.W. 13 (Iowa 1940).

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
Kansas	Parent is defined as any person who is liable for the support of a child. Kan. Stat. Ann. 1964, § 38-802.	Yes, if paternity established by court or father admits paternity in court. Kan. Stat. Ann. 1964, § 62-2312.	Only by mother. Kan. Stat. Ann. 1964, § 59-2102.	Child inherits from father if father notoriously or in writing recognizes paternity of child, or paternity is established by court in father's lifetime. Kan. Stat. Ann. 1964, § 59-501.	Intermarriage of parents. Kan. Stat. Ann. 1964, §§ 23-125, 23-126.
Kentucky		Yes—Ky. Rev. Stat. 1964, § 406-011.	Only by mother. Ky. Rev. Stat. 1964, § 199.500.	Child inherits from father only if parents intermarry and father recognizes	Intermarriage of parents and recognition by father. Ky. Rev. Stat. 1964,

				child. Ky. Rev. Stat. 1964, § 391.090.	§ 391.090.
Louisiana	After death of mother, the father is of right the tutor of his natural child if child is acknowledged by father. La. Civ. Code Ann. Art. 256, 202. Compare La. Rev. Stat. Ann. 1965, § 9:404.	Yes—Compare La. Civ. Code Ann. 1965, Art. 240, with Caldwell v. Headrick, 197 So. 2d 363 (La. 1967).	Only by mother. La. Rev. Stat. Ann. 1965, § 9:404.	None—La. Civ. Code Ann. 1965, Art. 920.	Intermarriage of parents. La. Civ. Code Ann. 1965, Art. 198. Illegitimate child has no family even when legally acknowledged. Compare La. Civ. Code Ann. 1965, Arts. 202, 203, 238.
Maine		Yes—Me. Rev. Stat. Ann. 1967, Title 19, §§	Only by mother. Me. Rev. Stat. Ann. 1967,	Child inherits from father if father adopts	Intermarriage of parents or father adopts child

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
		271, 273.	Title 19, § 532.	the child into his family or acknowledges the child in writing before notary public. Me. Rev. Stat. Ann. 1965, Title 18, § 1003.	into his family or acknowledges, in writing, the child before a notary public. Me. Rev. Stat. Ann. 1965, Title 18, § 1003.
Maryland	Custody of child may be determined by court, for the general welfare and best interest of the child. Md. Ann. Code 1957, Art. 16, § 66 H (b).	Yes—Md. Ann. Code 1957, Art. 16, § 66 H (a).	Only by mother unless child is legitimated according to the laws of any jurisdiction. Md. Ann. Code 1957, Art. 16, § 74.	Child inherits from father if § 1-208 (Laws of Md. 1969) is satisfied. Laws of Md. 1969, §§ 1-209, 3-103.	Child is deemed of his father if paternity established, or written acknowledgment or notorious recognition by father or intermarriage and acknowledge-

					ment. Laws of Md. 1969, § 1-208.
Massachusetts	Custody of child may be determined by court. Mass. Gen. Laws Ann. 1958, Ch. 273, § 14.	Yes—Mass. Gen. Laws Ann. 1958, Ch. 273, § 15.	Only by mother. Mass. Gen. Laws Ann. 1970, Ch. 210, § 2.	Child inherits from father if legitimated or if paternity is established. Mass. Gen. Laws Ann. 1958, Ch. 190, § 7.	Intermarriage of parents plus acknowledgment. Mass. Gen. Laws Ann. 1958, Ch. 190, § 7.
Michigan	Primary right to custody in mother, secondary in father, but both subordinate to welfare of child. In re T., 154 N.W. 2d 27 (Mich. 1967).	Yes—Mich. Civ. Law Ann. 1968, § 722.712.	Only by mother. Mich. Civ. Law Ann. 1968, § 710.3.	None unless child is legitimated. Mich.Civ. Law Ann. 1968, §§ 27.3178(151), 27.3178(153).	Intermarriage of parents or written acknowledgment. Mich. Civ. Law Ann. 1968, § 702.83.

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
Minnesota	Father may be awarded custody of child where mother rejects child and father is competent to care for the child, but the right to custody is subordinated to the best interest of the child. In re Brennan, 134 N.W. 2d 126 (Minn. 1965).	Yes—Minn. Stat. Ann. 1971, § 257.23.	Only by mother. Minn. Stat. Ann. 1971, § 259.24. Putative father who appears at adoption proceeding and acknowledges paternity is entitled to be heard. In re Brennan, 134 N.W. 2d 126 (Minn. 1965).	Child inherits from father if father declares paternity in writing before a witness, but child shall not inherit from the kindred of either parent. Minn. Stat. Ann. 1971, § 525.172.	Intermarriage of parents. Minn. Stat. Ann. 1971, § 517.19.
Mississippi	The putative father who is able to take care of and	Yes—Miss. Code 1962, §§ 373-01, 383-04.	Putative father is not deemed to be a parent for	Child inherits from father only if legilti-	Intermarraige of parents and acknowledg-

	support the child is entitled to the childs custody after the death of the mother. Aycock v. Hampton, 36 So. 245 (Miss. 1904).		purposes of adoption. Miss. Code 1962, § 1269-03.	mated. Miss. Code 1962, § 474.	ment. Miss. Code 1962, § 474.
Missouri	Parents are presumed to be fit to assume custody, mother has primary right. In re Richard, 280 S.W. 2d 466 (Mo. App. 1955).	Yes—Vernons Mo. Stat. Ann. 1965, § 559.353.	Only by mother. Vernons Mo. Stat. Ann. 1965, § 453.030.	Child inherits from father only if child is legitimated. Vernons Mo. Stat. Ann. 1965, § 474.070.	Intermarriage of parents. (Vernons Mo. Stat. Ann. 1965, § 474.070) plus recognition. T.v.T. 446 S.W. 2d 795 (Mo. App. 1969).
Montana		Yes when paternity is established.	Only by mother. Mont. Rev.	Child inherits from father who,	Intermarriage of parents. Mont.

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		Mont. Rev. Code 1970, § 94-9907.	Code 1970, § 61-205.	in writing, before a witness acknowledges the child, but child does not represent his parents by inheriting from their kindred unless the child is legitimated. Mont. Rev. Code 1970, § 91-404.	Rev. Code 1970, § 61-123.
Nebraska	Child, on death of mother, may be placed in the care of the putative father. Dodge	Yes if paternity established by court or by father's acknowledgment. Neb.	Only by mother. Neb. Rev. Stat. 1968, § 43-104.	Child inherits from father if father acknowledges child in writing before	Intermarriage of parents and acknowledgment. Neb. Rev. Stat. 1968, § 13-

	County v. Kemnitz, 49 N.W. 226 (Neb. 1891).	Rev. Stat. 1968, §§ 13-102, 13-109.		witness, but child doesn't represent parents from their kindred unless legitimated. Neb. Rev. Stat. 1968, § 30-109.	109.
Nevada		Yes—Nev. Rev. Stat. 1967, § 126.030.	Only by mother. Nev. Rev. Stat. 1967, § 127.040.	Child inherits from father who acknowledges child in writing, before a witness. Nev. Rev. Stat. 1967, § 134.170.	Intermarriage of parents. Nev. Rev. Stat. 1967, § 122.140.
New Hampshire		Yes—N.H. Rev. Stat. Ann. 1964, § 168:4.	Only by mother. N.H. Rev. Stat. Ann. 1968, Ch. 641:3.	None unless child is legitimated. N.H. Rev. Stat. Ann.	Intermarriafie of parents plus recognition. N.H. Rev.

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				1964, Chs. 457:42, 561:4.	Stat. Ann. 1964, Ch. 457:42.
New Jersey	Father has no right to custody of child. N.J. Stat. Ann. 1960, Title 9:2-19 and 9:16-1. Putative father may question custody of child and has a greater right to custody than a stranger. Guardianship of S. 237 A. 2d 652 (N.J. Sup. 1967).	Yes—N.J. Stat. Ann. 1960, Title 9:16-2.	Only by mother. N.J. Stat. Ann. 1960, Title 9:3-19 and 9:3-18.	None unless child is legitimated. N.J. Stat. Ann. 1960, Title 3A:4-7.	Intermarriage of parents and recognition. N.J. Stat. Ann. 1960, Title 9:15-1.

New Mexico	Putative father has standing to litigate custody of child. Torres v. Gonzales, 450 P. 2d 921 (N.M. 1969).	Yes—N.M. Stat. 1967, Ch. 22-4-2.	Only by mother. N.M. Stat. 1967, Ch. 22-2-5.	Child inherits from father when father recognizes the child in writing. N.M. Stat. 1967, Ch. 29-1-18.	Intermarriage of parents. N.M. Stat. 1967, Ch. 29-1-20.
New York	On death of mother, the natural father is entitled to custody of the child if he is a fit person. Fierro v. Ljubicich, 165 N.Y. S. 2d 290 (1957).	Yes—Storm v. None, 291 N.Y. S. 2d 515 (1968).	Only by mother. N.Y. Dom. Rel. Law, § 111 (McKinney 1964).	Child inherits from father if court, during lifetime of father, makes an order of filiation declaring paternity. N.Y. Estate and Trust Law, § 4-1.2 (2) (McKinney 1964).	Intermarriage of parents. N.Y. Dom. Rel. Law, § 24 (McKinney 1964).

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
North Carolina	N.C. Gen. Stat. 1969, § 48-4 provides for adoption of child by putative father by way of petition in Superior Court.	Yes—N.C. Gen. Stat. 1969, §§ 49-2, 49-15.	Only by mother. N.C. Gen. Stat. 1969, § 48-6.	Child inherits from father if child is legitimated. N.C. Gen. Stat. 1969, § 49-11.	Intermarriage of parents § 49-12. Verified written petition by father in superior court praying that child be legitimated. The mother and child are necessary parties. N.C. Gen. Stat. 1969, § 49-10.
North Dakota	Mother has sole custody of child. N.D. Code 1960, Titles 14-09-05, 32-36-35.	Yes—N.D. Code 1960, Title 32-36-01; N.D. Code 1969, Title 56-01-	Only by mother. N.D. Code 1960, Title 14-11-04. Notice of adoption	Every child inherits from natural parents. N.D. Code, 1969, Title 56-01-	Intermarriage of parents. N.D. Code, 1960, Title 14-09-02.

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
North Carolina	N.C. Gen. Stat. 1969, § 48-4 provides for adoption of child by putative father by way of petition in Superior Court.	Yes—N.C. Gen. Stat. 1969, §§ 49-2, 49-15.	Only by mother. N.C. Gen. Stat. 1969, § 48-6.	Child inherits from father if child is legitimated. N.C. Gen. Stat. 1969, § 49-11.	Intermarriage of parents § 49-12. Verified written petition by father in superior court praying that child be legitimated. The mother and child are necessary parties. N.C. Gen. Stat. 1969, § 49-10.
North Dakota	Mother has sole custody of child. N.D. Code 1960, Titles 14-09-05, 32-36-35.	Yes—N.D. Code 1960, Title 32-36-01; N.D. Code 1969, Title 56-01-	Only by mother. N.D. Code 1960, Title 14-11-04. Notice of adoption	Every child inherits from natural parents. N.D. Code, 1969, Title 56-01-	Intermarriage of parents. N.D. Code, 1960, Title 14-09-02.

		05.	hearing must be given to father who acknowledges paternity or against whom paternity is adjudicated. N.D. Code, 1961, Title 14-11-10.	05; In re Jensen, 162 N.W. 2d 861 (N.D. 1968).		
Ohio	See legitimigation Page's Ohio Rev. Code, 1960, § 2105.18. When the father publicly acknowledges the child, contributes to its support and is a proper person he is entitled to	Yes—Pages Ohio Rev. Code, 1960, § 3111.17.	Only by mother. Pages Ohio Rev. Code, 1969, § 1307.06.	None, unless child is legitimated. Pages Ohio Rev. Code, 1969, §§ 2105.17, 2105.18.	Intermarriage of parents plus acknowledgment, or father may file an application in probate court, acknowledging the child as his and upon consent of mother, or if she is de-	

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
	custody when the mother relinquishes or abandons control of the child. French v. Catholic Community League, 44 N.E. 2d 113 (Ohio App. 1942).				ceased, the consent of the person or agency having custody or the court having jurisdiction over custody, the court if satisfied tha the petitioner is the father and that the establishment of such relationship is for the best interest of the child, may enter the fact upon the courts journal and child is deemed

					legitimate. Page's Ohio Rev. Code, 1960, § 2105-18.
Oklahoma	Determination of custody may be determined by court. Ex parte Hendrix, 100 P. 2d 444 (1941).	Yes—Okla. Stat. Ann. 1961, Title 10, § 78. Plunkett v. Atkins, 371 P. 2d 727 (Okla. 1962).	Only by mother. Okla. Stat. Ann. 1961, Title 10, § 606.	Child inherits from father who, in writing, before a witness acknowledges the child, but child does not represent the father (or mother) by inheriting from his kindred unless parents intermarry and father acknowledges the child. Okla. Stat. Ann. 1961,	Father, by publicly acknowledging the child, receiving the child into his home, with the consent of his wife if married, and otherwise treating the child as legitimate, adopts the child and child is for all purposes legitimate. Okla. Stat. Ann. 1961, Title 10, § 2.

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				Title 84, § 215.	
Oregon	Custody may be determined by the county public welfare departments. Ore. Rev. Stat. 1965, § 418.015.	Yes—Ore. Rev. Stat. 1965, §§ 109.220, 109.155.	By both parents if they intermarry or if paternity is established by § 109.070. Ore. Rev. Stat. 1965, § 109.080.	Child inherits from father if paternity is established or if father acknowledges the child, in writing. Ore. Rev. Stat. 1965, § 112.105.	Legal status between person and his parents and kindred are the same for all persons whether or not the parents have been married. Ore. Rev. Stat. 1965, §§ 109.060, 109.070.

Pennsylvania	Father is entitled to custody if mother is deceased, if he is a suitable person. Human v. Hyman, 63 A. 2d 447 (Pa. 1949).	Yes—Purdon's Pa. Stat. Ann. 1963, Title 18, § 4732.	Only by mother. Purdon's Pa. Stat. Ann. 1963, Title 1, § 2 (c).	Child inherits from father only if parents intermarry. Purdon's Pa. Stat. Ann. 1963, Title 20, § 1.7.	Lawful wedlock of parents plus cohabitation. Purdon's Pa. Stat. Ann. 1963, Title 48, § 167.
Rhode Island	Court may place child in custody of person other than the mother, welfare of child is paramont. In re Hope, 34 A. 994 (R.I. 1896).	Yes—R.I. Gen. Law 1956, § 15-8-10.	Only by mother. Compare R.I. Gen. Law 1956, § 15-7-5 with Sklaroff v. Stevens, 120 A. 2d 694 (R.I. 1956).	None unless child is legitimated. R.I. Gen. Laws, 1956, § 33-1-8.	Intermarry of parents plus acknowledgment. Compare R.I. Gen. Laws, 1956, §15-8-21 with § 33-1-8.

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South Carolina		Father must provide child with necessaries of life. S.C. Code, 1964, § 20-303.	Only by mother. S.C. Code, 1964, § 10-2587.7.	None, unless child is legitimated. S.C. Code, 1964, § 19-53, Walker v. Walker, 274 F. 2d 425 (4th Cir. 1960).	Intermarriage of parents. S.C. Code, 1964, § 20-5.1.
South Dakota		Yes—S.D. Com. Laws, 1967, § 25-8-2.	Only consent of mother. S.D. Com. Laws, 1967, § 25-6-4.	Child inherits from father who acknowledges child, in writing before a witness, but child doesn't represent father by inheriting from his kindred unless parents have in-	Father by publicly acknowledging child, receiving the child into his family, with consent of his wife if married, and otherwise treating the child as legitimate, adopts the

				termarried and acknowleged child, or adopts child. S.D. Com. Laws, 1967, § 29-1-15.	child and child is legitimate for all purposes. S.D. Com. Laws, 1967, § 25-6-1.
Tennessee		Yes—Tenn. Code, 1956, § 36-223.	Only by mother. Tenn Code, 1956, § 36-111.	Child inherits from father if paternity is established or if father makes written petition. Tenn. Code, 1956, §§ 36-234, 36-302, 36-306.	Intermarriage of parents. Tenn. Code, 1956, § 36-307.
Texas	No. Home of the Holy Infancy v. Kaska, 397 S.W. 2d 208 (Tex. 1965).	No. Home of the Holy Infancy v. Kaska, 397 S.W. 2d 208 (Tex. 1965).	Only by mother. Vernon's Ann. Tex. Stat. 1955, Art. 46a, § 6(d).	Child inherits from father only if child is legitimated. Vernon's Tex. Prob. Code, 1955, § 42.	Intermarriage of parents. Vernon's Ann. Tex. Prob. Code, 1955, § 42.

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
Utah	Father has no right to custody if mother is living and wishes to retain custody unless, upon petition in court, it appears that mother is not suitable to retain custody. Utah Code Ann., 1966, § 77-60-12.	Yes—Utah Code Ann. 1966, § 77-60-7.	Consent by each parent having rights to the child. Utah Code Ann. 1966, § 78-30-4.	Child inherits from father who acknowledges the child. Utah Code Ann. 1966, § 74-4-10.	Father, by publicly acknowledging the child, receiving the child, with consent of his wife if married, and treating the child as legitimated, adopts the child and the child is legitimate for all purposes. Utah Code Ann. 1966, § 78-30-12.

Vermont	Mother is guardian of child until another is appointed. Vt. Stat. Ann. 1967, Title 14, § 2643.	Yes—Vt. Stat. Ann. 1967, Title 15, § 339.	Only by mother. Vt. Stat. Ann. 1967, Title 15, § 435.	Child inherits from father if paternity is established or father openly and notoriously claims the child. Vt. Stat. Ann. 1967, Title 14, § 533(b).	Intermarriage of parents plus recognition by father. Vt. Stat. Ann. 1967, Title 14, § 554.
Virginia	Court may award custody to father. Hayes v. Strauss, 144 S.E. 432 (Va. 1928).	Yes—Va. Code, 1968, § 20.61-1.	Only by mother. Va. Code, 1968, § 63.1-225.	None—Va. Code, 1968, § 64.1-5.	Intermarriage of parents plus recognition by father. Va. Code, 1968, § 64.1-6.
Washington	Mother is awarded custody of child if she is suitable, if not the court	Yes—Wash. Rev. Code Ann. 1967, § 26.24.090.	Only by mother. Wash. Rev. Code Ann. 1967, § 26.32.030.	Child inherits from father if parents intermarry or father ack-	Intermarriage of parents. Wash. Rev. Code Ann. 1967, § 26.04.060.

State	Provision for Custody by Father	Provision for Support by Father	Consent Required for Adoption	Provision for Inheritance From Father	Method of Legitimization
	may deliver custody to any reputable person, including the father, charitable or state institution. Wash. Rev. Code Ann. 1967, §§ 26.24.190. Upon death of mother, putative father, if fit and welfare of child permits, is entitled to custody. In re Moore's Estate, 415 P. 2d 653 (Wash. 1966).			nowledges the child in writing. Wash. Rev. Code Ann. 1967, § 11.04.081.	

West Virginia		Yes—W. Va. Code, 1969, § 48-7-4.	Only of mother. W. Va. Code, 1969, § 48-4-1.	None, unless child is legitimated. W. Va. Code, 1969, § 42-1-5. Pace v. Celebrezze, 243 F. Supp. 317 (S.D. W. Va. 1965).	Intermarriage of parents. W. Va. Code, 1969, § 42-1-6.
Wisconsin	The father has right to custody against all but the mother. In re Aronson, 58 N.W. 2d 553 (Wis. 1953).	Yes—Wis. Stat. Ann. 1957, § 52.37.	Only of mother. Wis. Stat. Ann. 1957, § 48.84. If father voluntary appears at proceeding he will be heard. In re Aronson, 58 N.W. 2d 553 (Wis. 1953).	Child inherits from father if father acknowledges the child, in writing before witness or paternity established, or if father admits paternity in open court. Wis. Stat. Ann. 1957, § 237.06.	Intermarriage of parents. Wis. Stat. Ann. 1957, § 237.06.

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Wyoming		Yes—Wyo. Stat. 1963, § 14-60.	Only by mother. Wyo. Stat. 1963, § 1-710.1.	Child inherits from father only if legitimated. Wyo. Stat. 1963, § 2-44.	Intermarriage of parents plus recognized by father. Wyo. Stat. 1963, § 2-44.